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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

ARGUMENT UPON REARGUMENT OF ARTHUR B. SCHAFFNER, OF CHICAGO, ILLINOIS, AND OF P. F. HENDERSON, AND OF HENDERSONS AND SALLEY, OF AIKEN, SOUTH CAROLINA, FOR PLAINTIFFS IN ERROR.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSON & SALLEY,
Counsel for Plaintiffs in Error.

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BRIEF FOR PLAINTIFFS IN ERROR.

The judgment of the Supreme Court of South Carolina, here sought to be reviewed, was entered on May 27, 1927. The opinion of the court below (R. 93-113)

has not been officially reported. A petition for rehearing was seasonably filed and order entered denying the same on September 26, 1927 (R. 113). The petition for writ of error (R. 118) and assignments of error (R. 115) were duly presented to the Chief Justice of the State of South Carolina and writ of error allowed by him (R. 124-125) on December 19, 1927. The judgment in question affirmed the action of the South Carolina Tax Commission imposing an inheritance tax upon plaintiffs in error.

Jurisdiction exists in this Court because said judgment was a final judgment in a suit in the highest court of the State of South Carolina in which a decision in the suit could be had, where was drawn in question the validity of the Inheritance Tax Act of the State of South Carolina (approved February 23, 1922, Laws of 1922, page 800) on the ground of its being repugnant to the Constitution of the United States, and especially to the Fourteenth Amendment thereof, and the decision of the Supreme Court of South Carolina was in favor of such validity.

U. S. C., Title 28, Sec. 344.

The statute, as construed and applied by the Supreme Court of South Carolina, levied an inheritance tax on the transfer of a debt due by a South Carolina corporation to the decedent, Francis Beidler, a resident of Illinois, and thereby deprived plaintiffs in error, as his executors, of property without due process of law, because said debt, plaintiffs in error submit, had a taxable *situs* only in Illinois and was under the Constitution of the United States and the Fourteenth

Amendment thereof taxable only in Illinois and not in South Carolina. This presents a question within the jurisdiction of this Court.

Frick *v.* Pennsylvania, 268 U. S. 473.

Rhode Island Hospital Trust Company *v.* Doughton, 270 U. S. 69.

Safe Deposit and Trust Co. *v.* Virginia, 74 L. Ed. 76, 78.

Objection to the tax on this specific ground was made before the Tax Commission (R. 7) in the exceptions taken on the appeal to the Supreme Court of South Carolina (R. 90) and by the assignments of error herein, especially the first, second, third, fourth, fifth, twelfth, and thirteenth thereof (R. 115-117).

Writ of error is the proper method of review.

Blodgett *v.* Silberman, 277 U. S. 1.

Statement of Facts.

Francis Beidler, a resident of Chicago, Illinois, died there on March 4, 1924 (R. 1). By his will (R. 8), which was duly admitted to probate in the Probate Court of Cook County, Illinois, he nominated the plaintiffs in error as executors and letters testamentary were issued to them as such executors on January 28, 1925 (R. 112).

At the time of Mr. Beidler's death he owned 8,000 shares of the capital stock of the Santee River Cypress Lumber Company, a South Carolina corporation. Mr. Beidler had also made large advances to this company. A complete statement of these advances and of payments made thereon by the company appears

on pages 139 to 150 of the transcript of record. The advances began in the year 1907 and continued at frequent intervals until December, 1920. Thereafter there was only one advance of $5,000.00, on December 2, 1922. From time to time payments were made by the company to Mr. Beidler on account of these advances. These payments were, however, infrequent before the year 1921 and up to that time the account in general was growing, so that at the end of the year 1920 the company owed Mr. Beidler a total of $1,043,562.00. Beginning with January 10, 1921, all the items on the account, except the advance of $5,000.00 in December, 1922, already mentioned, are credits, so that at the time of his death this account had been reduced to the sum of $556,864.22. These advances were ordinarily made by a deposit to the credit of the company in a Chicago bank. The account was an open, unsecured book account, the only evidences thereof being the entries upon the books of Mr. Beidler in Chicago and the corresponding entries on the books of the corporation in South Carolina. In addition to the advances above mentioned, the company was also indebted to Mr. Beidler at the time of his death in the sum of $64,672 for dividends declared but not yet paid.

By agreement between the Tax Commission and the executors the 8,000 shares of stock of the Santee Company were valued at $204.00 per share, or $1,632,000.00. The executors did not contest the levying of a tax upon this stock, but specifically claimed that the indebtedness, both that for advances and that for divi-

dends (R. 6, 7), was not taxable. The Tax Commission, however, overruled this claim and held that the personal estate taxable in South Carolina amounted to a total of $2,253,536.22 and levied an inheritance tax upon this amount, the total tax imposed amounting to $144,106.10 (R. 3). From this judgment of the Tax Commission an appeal was duly taken under the laws of South Carolina to the Supreme Court, which is the highest court of the State. From the judgment of the Supreme Court affirming the assessment of the Tax Commission as to the taxability of the indebtedness this writ of error is sued on.

The Beidler estate was assessed and paid an inheritance tax upon this same debt to the State of Mr. Beidler's domicile—Illinois (R. 63-4).

It is to be noted that at the time of the death of Mr. Beidler the State of South Carolina had not enacted a Reciprocal Exemption Act as to inheritance taxes. Such an Act was passed on the 28th day of February, 1929 (36 S. C. Stat. 226). Said Act fully provides that in the case of a decedent who was a non-resident of the State of South Carolina, but was a resident of a State which likewise has a reciprocal provision in its Act, that no inheritance tax on intangible personal property shall be collected in the State of South Carolina against such estate. This Act did not go into effect until the first day of January, 1930. The Illinois statute carried a reciprocal clause (State of Ill., 1927, p. 747). While the South Carolina Reciprocal Exemption Statute may not govern the Beidler case, still it is a fact that the decision of this Court in this case will not regulate nor interfere with the future tax

policy of the State of South Carolina, but will only decide the specific case before it, as no tax would have been assessed against the Beidler estate had Mr. Beidler died after the first of January, 1930.

ARGUMENT.

The situation presented then to the Court by the facts herein is that the State of South Carolina, acting under its Inheritance Tax Statute, has undertaken to levy an inheritance tax of approximately $65,000.00 upon an open, unsecured debt of approximately $620,000.00 due by a South Carolina corporation to Francis Beidler, who at the time of his death and always was a resident and citizen of Illinois. Mr. Beidler's estate paid an inheritance tax on the debt to the State of his domicile—Illinois. The Supreme Court of South Carolina held the levy of a second inheritance tax in South Carolina, the domicile of the debtor, to be legal. This is the issue herein. The plaintiffs in error submit, to the contrary, that the only taxable *situs* of the debt was in Illinois, and that South Carolina had no power to tax it.

In its decision, rendered more than three years ago, the Supreme Court of South Carolina relied implicitly upon the decision of this Court in Blackstone *v.* Miller, 180 U. S. 189, which it characterized as "the case which really determines this appeal" (R. 97). Since this decision of the Supreme Court of South Carolina was rendered, this Court has, however, handed down a series of notable decisions, which have expressly overruled Blackstone *v.* Miller and the old rule therein established twenty-seven years ago, and have firmly,

we submit, established a new general rule.

This Court some years ago, in such cases as Union Refrigerator Transit Company *v.* Kentucky, 191 U. S. 194, and Frick *v.* Pennsylvania, 268 U. S. 473, had determined as to tangibles that they could be taxed only where they had a physical *situs,* and could be taxed in but one State. The new rule recently established by this Court, in the series of decisions mentioned, has extended this rule specifically to intangibles. To quote the language of the Court in one of the new decisions referred to (the Minnesota case hereinafter set out), said new rule is as follows:

> *"In general intangibles may be properly taxed at the domicile of their owner and * * * are entitled to enjoy an immunity against taxation at more than one place, similar to that accorded to tangibles."*

Of course, the Supreme Court of South Carolina did not have the benefit of this series of important decisions, so recently rendered, or the benefit of the new rule therein promulgated, or its decision would doubtless have been otherwise.

These cases (only one of which had been decided when this case was first argued before this Court) are:

The Connecticut Case (Blodgett *v.* Silberman, 72 Law Ed. 749, 277 U. S. 1).

The Minnesota Case (Farmers Loan & Trust Company, Executor, *v.* State of Minnesota, 74 Law Ed., decided January 6, 1930).

The Missouri Case (Thomas A. Baldwin *v.* State of Missouri, 74 Law Ed. 593, decided May 26, 1930).

We shall content ourselves, upon the reargument of this matter, with a brief review of these decisions and a reference to another matter.

The New Rule as to the Taxation of Intangibles.

Under the old rule, enunciated in Blackstone *v.* Miller, double inheritance taxation upon an intangible was possible under certain circumstances, which circumstances need not now be considered in detail. Under the new rule established by the decisions to be reviewed, we submit that but one inheritance tax may be levied upon an intangible, and that only at the domicile of its owner—Illinois in this case. We ask to take up these cases in their chronological order:

(1) *The Connecticut Case (Blodgett v. Silberman).*

In the Connecticut case, which was but the precursor of the others in the series, it was held that the State of Connecticut might levy an inheritance tax, it being the State of the domicile of the decedent, upon the value of a partnership existing solely in New York State, and upon the value of bonds and certificates of the United States which were physically kept on deposit in New York. The Court said:

> "At common law the maxim '*mobilia sequuntur personam*' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to

> whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the State of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not."

The Court left open in the Blodgett case, decided in 1928, the vital question in which we are interested in the present case, namely, that of whether intangibles might also be taxed in the State in which they were physically kept, or in which the creditor resided, the Court saying:

> "Further, this principle is not to be shaken by the inquiry into the question whether the transfer of such intangibles, like specialties, bonds or promissory notes, is subject to taxation in another jurisdiction. As to that we need not inquire. It is not the issue in this case. For present purposes it suffices that intangible personalty has such a *situs* at the domicile of its owner that its transfer on his death may be taxed there."

(2) *The Minnesota Case (Farmers Loan & Trust Company v. State of Minnesota).*

In this case this Court definitely overruled Blackstone *v.* Miller and definitely promulgated the new rule.

The facts were that Henry R. Taylor died domiciled and residing in New York. "He had long owned and kept within that State negotiable bonds and cer-

tificates of indebtedness issued by the State of Minnesota and cities of Minneapolis and St. Paul worth about three hundred thousand dollars." Minnesota claimed an inheritance tax upon the old theory of Blackstone *v.* Miller, that the debtor, the maker of the bonds, was within her jurisdiction and under the coercive power of her laws. This Court first swept Blackstone *v.* Miller aside, saying:

> "Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable. Blackstone *v.* Miller no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding, it is definitely overruled."

The Court then went on to elaborate, stating the new rule as follows:

> "While debts have no actual territorial situs we have ruled that a State may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the creditor's domicile for taxation purposes. Tangibles with permanent situs therein, and their testamentary transfer, may be taxed only by the State where they are found. And, we think, *the general reasons declared sufficient to inhibit taxation of them by two States apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction.* Primitive conditions have passed; business is now transacted on a national scale. A very large part of the country's wealth is invested in negotiable securities whose protection against discrimination, unjust and oppressive

taxation, is a matter of the greatest moment. Twenty-four years ago Union Refrig. Transit Co. *v.* Kentucky, supra, declared—'In view of the enormous increase of such property (tangible personalty) since the construction of railways and the growth of manufacturers, the tendency has been in recent years to treat it as having a situs of its own for the purpose of taxation and correlatively to exempt it at the domicile of the owner.' And, certainly, existing conditions no less imperatively demand protection of choses in action against multiplied taxation whether following misapplication of some legal fiction or conflicting theories concerning the sovereign's right to exact contributions. For many years the trend of decisions here has been in that direction.

"Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. *We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles.* The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota." (Italics added.)

(3) *The Missouri Case* (*Baldwin v. Missouri*).

The final decision in the series dealt with a decedent who resided in Illinois and who had two or more bank

accounts in the State of Missouri and who had sundry promissory notes secured *by mortgages on Missouri real estate, which notes and mortgages were actually physically kept in* Missouri." The Supreme Court, on the 26th day of May, 1930, ruled:

> "We find nothing to exempt the effort to tax the transfer of the deposits in Missouri banks from the principle applied in Farmers Loan & T. Co. *v.* Minnesota, supra. So far as disclosed by the record the situs of the credit was in Illinois where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwhere.
>
> "The bonds and notes, *although physically within Missouri*, under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living and there this transfer was actually taxed. *As they were not within Missouri for taxation purposes the transfer* was not subject to her power. Rhode Island Hospital Trust Co. *v.* Doughton, 270 U. S. 69, 70 L. Ed. 475, 43 A. L. R. 1374, 46 Sup. Ct. Rep. 256." (Italics added.)

We submit that the Beidler case squares absolutely with the new rule.

We have here a mere open book account due by a corporation of South Carolina to an Illinois decedent—*the plainest type of an intangible imaginable.* There is not herein even the existence of a note, nor a bond, nor of a security deed or mortgage which might be kept possibly in a third State to complicate the mat-

ter. The existence of such evidences, indeed, no longer becloud the issue, although they once added perplexity. But in the Beidler case they simply do not exist. Mr. Beidler kept a complete set of books in Chicago, which alone were the controlling evidence of the debt.

We submit that the only taxable *situs* of the debt was in Illinois, in which State, the record shows, a large inheritance tax was levied and paid. To allow South Carolina now to levy a tax would be to visit another tax upon the same transfer, which, as we understand it, is contrary to the new rule.

It is proper to note that during November, 1929, this Court, in Safe Deposit & Trust Company *v.* Virginia, 74 L. Ed. 76, held, in general accord with the decisions herein reviewed, that securities owned outright by a trustee in Maryland were not subject to a property tax at the domicile of the beneficiary in Virginia, upon the general ground that as said securities were certainly taxable in Maryland as the domicile of the trustee, that they should not be subjected to double taxation by allowing another tax in Virginia. This decision as against double taxation is entirely in line with cases hereinbefore reviewed.

The Business Situs Question.

In the recent decisions, this Court left for future consideration, in a proper case, this question.

Although the Supreme Court of South Carolina indicated that it thought that the debt herein had acquired a business *situs* in South Carolina, counsel for the State in their brief upon the former argument of this cause did not claim that the debt due Mr. Beidler

had such a *situs*. If any such claim be now made we respectfully refer the Court to our former argument (pp. 59-69), wherein the question is fully discussed and the authorities collated.

This feature of the matter is fully covered by the language of the present Chief Justice (then Mr. Justice Hughes) in the leading case on this subject, in which the existence of a business *situs* was sustained (Liverpool Insurance Company *v.* Board of Assessors, 221 U. S. 346, 356) as follows:

> "We are not dealing here *with a single credit or a series of separate credits, but with a business.* The insurance company chose to enter *into the business of lending money within the State of Louisiana, and employed a local agent to conduct* that business." (Italics added.)

In the Beidler case no *business* of lending existed. Mr. Beidler owned a controlling interest in the South Carolina debtor corporation and advanced it money from time to time, which it repaid in part from time to time. At most there was "*a series of separate credits*", not a business.

The loan was made from Chicago. There was no lending agent in South Carolina. There was no feature, such as existed in the case cited (and in most cases of this subject), of making a business of lending money, collecting it in, and lending it again to a new set of borrowers. The case falls far short, we submit, of what has always been considered by this Court to be necessary to establish a taxable business *situs*. See Cooley on Taxation (4th Ed.), Sec. 466.

Further, it is a fact that these advances (R. 139-150) had practically ceased in 1920, more than three

years before Mr. Beidler's death. At the close of 1920 the company owed him $1,043,000.00. Payments were made from time to time, so that at his death the amount due had been reduced to $556,864.22. The only advance made by him after 1920 was one of $5,000.00, in December, 1922. If lending to a single debtor, and that one a company which he controlled, could in any event constitute the doing of business by Mr. Beidler in South Carolina, that business had ceased long before his death.

But the reason actually assigned by the Supreme Court of South Carolina for thinking that the debt in question had acquired a business *situs* in South Carolina was (R. 101), to quote the court's decision, that:

> "Both the debt and dividend were involved in the assets of Santee River Cypress Lumber Company; *they were a part of its working capital* and were no doubt left with the debtor company (in which Mr. Beidler was vitally interested and which he and his family owned in toto), *to help and assist it along in its business.* He was tremendously interested in the affairs of the large and extensive corporation, and was no doubt cheerfully willing to leave these two large amounts invested here *to help make dividends for the company.*" (Italics added.)

In reply to this reasoning, we wish to say simply that the debt to Mr. Beidler was really a liability of the Santee River Cypress Company (to be deducted in considering the value of her stock) and not an asset; but if, as the South Carolina Supreme Court seemed to think, the fact that Mr. Beidler's money was allowed to remain with the company increased the

company's efficiency, if it served "to help and assist it along in its business," if it served "to make dividends for the company," if, in short, it increased the worth of the company, and hence the value of Mr. Beidler's stock in some indefinite and unascertained manner and amount, then this fact would be reflected in the value of the stock in Mr. Beidler's hands when he died and in the property taxation assessed by the State of South Carolina against the Santee Company. The records show (R. pages 2-5) that the State of South Carolina has collected an inheritance tax from the Beidler estate of more than $70,000 upon the value of Mr. Beidler's stock in the Santee Company, it being valued at $204 per share (par value $100). And, of course, the company has paid property taxes to the State from year to year.

Especially, we submit that the implied reasoning of the South Carolina court that, because the money in question might be in an indefinite way *"working"* for the Santee River Cypress Lumber Company, the debtor, presents no logical basis whatever for assessing double inheritance taxation against the creditor's estate, but could affect only (if at all) the taxation of the debtor corporation.

All of which is respectfully submitted.

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